

Office of the Secretary, Education

§ 21.54

initial decision must inform the applicant of—

(1) Its right to request review by the CRRA; and

(2) Its right to request review by the Secretary of the CRRA's final decision.

(c) If the applicant or the Department's counsel appeals the adjudicative officer's initial decision, the appeal must be submitted to the CRRA, in writing, within 30 days after the initial decision is issued.

(d) If the applicant or the Department's counsel does not appeal the adjudicative officer's initial decision to the CRRA and the Secretary does not decide to review the initial decision under § 21.54(a), the initial decision becomes the Department's final decision 60 days after it is issued by the officer.

(Authority: 5 U.S.C. 504(b)(1)(C); 20 U.S.C. 1681; 29 U.S.C. 794; 42 U.S.C. 2000d-1 *et seq.* and 6101 *et seq.*)

§ 21.53 Final decision of the CRRA.

(a) In an application subject to the jurisdiction of the CRRA, the CRRA shall, within 30 days after receipt of the written appeal—

(1) Issue a final decision on the appeal of the adjudicative officer's initial decision; or

(2) Remand the application to the adjudicative officer for further proceedings.

(b) The CRRA shall review the initial decision on the basis of the written record of the proceedings on the application. This includes but is not limited to—

(1) The written request; and

(2) The adjudicative officer's findings as described in § 21.51(b).

(c) The CRRA shall act on the review by either—

(1) Issuing a final decision on the application; or

(2) Remanding the application to the adjudicative officer for further proceedings.

(d) If the CRRA issues a final decision, the CRRA's decision must include—

(1) Written findings, including supporting explanation, on—

(i) The applicant's status as a prevailing party;

(ii) The applicant's eligibility;

(iii) Whether the position of the Department was substantially justified;

(iv) Whether special circumstances make an award unjust;

(v) Whether the applicant engaged in conduct that unduly or unreasonably protracted the adversary adjudication; and

(vi) Other factual issues raised in the adversary adjudication.

(2) A statement of the amount awarded, including an explanation—with supporting information—for any difference between the amount requested by the applicant and the amount awarded.

(3) A statement of the applicant's right to request review by the Secretary under § 21.54.

(4) A statement of the applicant's right under § 21.56 to seek judicial review of the final award determination.

(e) The explanation referred to in paragraph (d)(2) of this section may include—

(1) Whether the amount requested was reasonable; and

(2) The extent to which the applicant unduly or unreasonably protracted the adversary adjudication.

(Authority: 5 U.S.C. 301, 557 (b) and (c); 20 U.S.C. 1681 and 3401 *et seq.*; 29 U.S.C. 794; 42 U.S.C. 2000d-1 *et seq.* and 6101 *et seq.*)

§ 21.54 Review by the Secretary.

(a) The Secretary may decide to review—

(1) An initial decision made by an adjudicative officer in a proceeding not subject to CRRA review;

(2) An initial decision made by an adjudicative officer in a proceeding subject to CRRA review that was not appealed to the CRRA; or

(3) A final decision made by the CRRA under § 21.53.

(b)(1) The Secretary does not review a final decision made by an adjudicative officer of the General Services Administration Board of Contract Appeals.

(2) The Secretary or a party to the proceedings may seek reconsideration of the final decision by an adjudicative officer of the General Services Administration Board of Contract Appeals on the fee application in accordance with 48 CFR 6101.32.

(c) The Secretary decides to review a decision under § 21.54(a) either—